

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JOSHUA STANHISER,)	CIVIL ACTION: 1:21-CV-407
)	
PLAINTIFF)	
)	
V.)	
)	
)	
JAMIE STANHISER and)	
DARLENE CHEEK,)	
)	
DEFENDANTS)	

NOTICE OF REMOVAL

Defendants, Jamie Stanhiser (hereafter referred to as STANHISER) and Darlene Cheek (hereafter referred to as CHEEK) by and through their undersigned counsel now hereby file this NOTICE OF REMOVAL pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 based on the following grounds:

1) This is a domestic violence case where the Plaintiff Joshua Stanhiser (hereafter referred to as Plaintiff) and STANHISER were once married with children. As of the date of the Underlying Lawsuit, Plaintiff and STANHISER had divorced and STANHISER and the minor children had moved away from North Carolina to live in San Diego County, California with CHEEK. Upon information and belief, Plaintiff remained in Durham County, North Carolina.

2) On April 21, 2021, Plaintiff filed a Complaint against STANHISER and CHEEK

in the North Carolina General Court of Justice Superior Court Division sitting in Durham County, North Carolina with the caption Joshua Stanhiser vs. Jamie Stanhiser and Darlene Cheek, with State case/file number 21 CVS 1979 (hereafter referred to as “Underlying Lawsuit”). A true copy of the complete North Carolina State Superior Court as of the date of this filing of the above titled matter are attached hereto as “Exhibit 1”. An accurate filed copy of the Defendants’ Amended Answer and Counterclaims is attached hereto as “Exhibit 2”, as said document was filed with the State court on May 21, 2021 but had yet to be fully recorded in the Durham County Clerk of Court system at the time of filing of this Notice of Removal.

3) STANHISER and CHEEK were both served with the Summons and Complaint of the above titled matter on or about April 23, 2021.

4) This Notice of Removal is timely under 28 U.S.C. §1446(b)(2)(B) as it is filed within thirty (30) days following service of the Summons and Complaint on both STANHISER and CHEEK.

5) At the time of service of the Summons and Complaint both STANHISER and CHEEK were residents and citizens of San Diego County, California.

6) Upon information and belief, at the time of filing of the above titled matter, Plaintiff was a citizen and resident of Durham County, North Carolina having lived and domiciled in Durham, North Carolina. Upon information and belief, Plaintiff travels approximately two (2) times per month to California in order to exercise his court ordered custody visitation with his two minor children. Upon information and belief, Plaintiff

owns a residence in Durham County, North Carolina and Plaintiff maintains a current North Carolina Department of Motor Vehicles issued identification card. A non-certified record of which is attached hereto as “Exhibit 3”.

7) Defendant submits that there is complete diversity of citizenship between STANHISER, CHEEK and Plaintiff.

8) The Underlying Lawsuit alleges that Plaintiff has suffered and is entitled to damages in an amount in excess of \$25,000 under his First Claim for Relief for Abuse of Process against STANHISER. The Underlying Lawsuit alleges that Plaintiff is entitled to punitive damages in an amount in excess of \$25,000 under his Second Claim for Relief for Malicious Prosecution against STANHISER.

9) The Underlying Lawsuit alleges that Plaintiff has suffered and is entitled to damages in an amount in excess of \$25,000 under his Third Claim for Relief for Abuse of Process against CHEEK. The Underlying Lawsuit alleges that Plaintiff is entitled to punitive damages in excess of \$25,000 under his Fourth Claim for Relief for Malicious Prosecution against CHEEK.

10) Pursuant to North Carolina General Statutes §1D-1 through §1D-50, punitive damages may be awarded where the conduct of the party was willful, malicious, or of a wanton character. Punitive damages are available in an amount “not [to] exceed three times the amount of compensatory damages or two hundred fifty thousand dollars (\$250,000), whichever is greater.” N.C.G.S. §1D-25(b) (citations omitted). Since Plaintiff is seeking not only, what appear to be, compensatory damages against both STANHISER

and CHEEK, but also punitive damages in the amounts indicated above against both STANHISER and CHEEK, then as to each Defendant, the amount in controversy exceeds \$75,000.00.

11) Pursuant to 28 U.S.C. §1446(c)(2), the sum demanded in the initial pleading shall be the good faith representation of the amount in controversy unless the State practice for pleading permits recovery of damages in excess of the amount demanded. In the Underlying Lawsuit, Plaintiff seeks both compensatory and punitive damages in excess of \$25,000 as to each Defendant. Therefore, if the District Court finds by the preponderance of the evidence that the amount in controversy exceeds the amount specified in 28 U.S.C. §1332(a) (which is \$75,000), then removal of the civil action is proper.

12) Based on the allegations of the Plaintiff in the Underlying Lawsuit and the prayer for the amounts of damages and punitive damages in excess of the above stated amounts, both STANHISER and CHEEK submit that the amount in controversy as to each of them exceeds \$75,000 and this Court has diversity jurisdiction over this action pursuant to 28 U.S.C §1332 and 28 U.S.C. §1446(c)(2).

13) Neither Defendant nor undersigned counsel have been served with or are aware of any other filings made in the State of North Carolina Court of General Justice beyond the Summons, Complaint and Answer of the Defendants.

14) No previous application for removal in this case has been made.

15) Notice to the Plaintiff of Removal is attached hereto as “Exhibit 4”.

Respectfully Submitted this 21st day of May 2021.

ALEXANDER, MILLER, SCHUPP & HAMILTON, PLLC

/s/ Michelle Williams Hamilton

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